



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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**Seventeenth Report  
of Session 2017–19**

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**Drawing special attention to:**

*Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk) Regulations 2018 (S.I. 2018/68)*

*Merchant Shipping (International Load Line Convention) (Amendment) Regulations 2018 (S.I. 2018/155)*

*Electronic Monitoring (Responsible Persons) Order 2018 (S.I. 2018/212)*

*Ordered by the House of Lords  
to be printed 21 March 2018*

*Ordered by the House of Commons  
to be printed 21 March 2018*

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## Joint Committee on Statutory Instruments

### Current membership

#### House of Lords

[Baroness Bloomfield of Hinton Waldrist](#) (*Conservative*)

[Lord Lexden](#) (*Conservative*)

[Baroness Meacher](#) (*Crossbench*)

[Lord Morris of Handsworth](#) (*Labour*)

[Lord Rowe-Beedoe](#) (*Crossbench*)

[Lord Rowlands](#) (*Labour*)

[Baroness Scott of Needham Market](#) (*Liberal Democrat*)

#### House of Commons

[Derek Twigg MP](#) (*Labour, Halton*) (Chair)

[Dan Carden MP](#) (*Labour, Liverpool, Walton*)

[Vicky Foxcroft MP](#) (*Labour, Lewisham, Deptford*)

[Patrick Grady MP](#) (*Scottish National Party, Glasgow North*)

[John Lamont MP](#) (*Conservative, Berwickshire, Roxburgh and Selkirk*)

[Lee Rowley MP](#) (*Conservative, North East Derbyshire*)

[Sir Robert Syms MP](#) (*Conservative, Poole*)

### Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No. 73, available on the Internet via [www.parliament.uk/jcsi](http://www.parliament.uk/jcsi).

### Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

- i that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;
- ii that its parent legislation says that it cannot be challenged in the courts;
- iii that it appears to have retrospective effect without the express authority of the parent legislation;
- iv that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;

- v that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;
- vi that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;
- vii that its form or meaning needs to be explained;
- viii that its drafting appears to be defective;
- ix any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

#### **Publications**

The reports of the Committee are published by Order of both Houses. All publications of the Committee are on the Internet at [www.parliament.uk/jcsi](http://www.parliament.uk/jcsi).

#### **Committee staff**

The current staff of the Committee are Mike Winter (Commons Clerk), Jane White (Lords Clerk) and Liz Booth (Committee Assistant). Advisory Counsel: Daniel Greenberg, Peter Brooksbank, Philip Davies and Vanessa MacNair (Commons); James Cooper, Nicholas Beach, John Crane and Ché Diamond (Lords).

#### **Contacts**

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# 1 Instruments reported

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At its meeting on 21 March 2018 the Committee scrutinised a number of Instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to three of those considered. The Instruments and the grounds for reporting them are given below. The relevant Departmental memoranda are published as appendices to this report.

## 1 S.I. 2018/68: Reported for unjustifiable delay in laying them before Parliament and for requiring elucidation

### *Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk) Regulations 2018*

1.1 The Committee draws the special attention of both Houses to these Regulations on the grounds that there appears to have been unjustifiable delay in laying them before Parliament and that they require elucidation in one respect.

1.2 These Regulations implement the revised version of Annex II of the International Convention for the Prevention of Pollution from Ships 1973.

1.3 There was a delay of 10 days between the making of this instrument and laying it before Parliament and the Committee asked the Department for Transport to explain. In a memorandum printed at Appendix 1, the Department apologises for the delay and undertakes to manage the laying of statutory instruments in a systematic way in the future. The Committee repeats what it said in its Fifteenth Report of Session 2017–19 (in relation to S.I. 2018/117): that it is difficult to imagine why it could have been necessary to postpone such a simple administrative step as laying before Parliament. The statutory arrangements for laying before Parliament remain part of the required formal measures by which publicity is assured. As previously stated, the Committee considers that, as a general rule and in the absence of exceptional circumstances, a delay of 10 calendar days or more will amount to an unjustifiable delay. **The Committee accordingly reports these Regulations for unjustifiable delay in laying before Parliament, acknowledged by the Department.**

1.4 Regulations 27, 41 and 42 use the expression “flag state” without definition. Noting that the expression is defined in a number of other instruments in the same context, the Committee asked the Department to explain the lack of a definition in this instrument. In its memorandum, the Department explains that there is inconsistent practice on this point between different instruments in this area, and that the decision to omit a definition in this instrument rested on confidence that the expression “flag state” is well understood in the maritime industry. While asserting that the absence of a definition does not cause uncertainty, the Department accepts “that, given the inclusion of such a definition in other instruments, it may have been prudent to include it and will endeavour to adopt a consistent approach in future relevant instruments”. The Committee welcomes the undertaking to ensure a consistent practice in future maritime instruments, and does not express a view as to whether the practice should be to include or to omit the definition. The Committee notes the explanation given in the Department’s memorandum as to the

meaning to be given to the expression and the basis for that meaning, **and accordingly reports regulations 27, 41 and 42 as requiring elucidation, provided by the Department’s memorandum.**

## **2 S.I. 2018/155: Reported for requiring elucidation and for failure to comply with proper legislative practice**

### ***Merchant Shipping (International Load Line Convention) (Amendment) Regulations 2018***

**2.1 The Committee draws the special attention of both Houses to these Regulations on the grounds that they require elucidation in one respect and that they fail to comply with proper legislative practice in another respect.**

2.2 These Regulations implement the International Convention on Load Lines 1966.

2.3 Regulation 23 deals with control by authorised officers over foreign ships in UK ports. The regulation limits the degree of control that may be exercised in relation to ships holding a valid International Load Line Certificate. The Committee found it difficult to see what additional limitation of control is added by paragraph (5) to paragraph (3)(c) and asked the Department for Transport for an explanation. In a memorandum printed at Appendix 2, the Department sets out its explanation, relying in part on the fact that the regulation closely follows the language of the Convention. The Committee is not completely convinced by the Department’s explanation of the intended difference between regulation 23(3)(c) and (5); but it accepts that the Department may feel constrained to follow the language of the Convention and that the explanation given by the Department is plausible. On that basis, **the Committee reports regulations 23(3)(c) and 23(5) as requiring elucidation, provided by the Department’s memorandum.**

2.4 The definition of “Category A, B, C or D waters” in regulation 2 refers to the waters specified as such in Merchant Shipping Notice 1837(M). There is no indication of where this Notice is available either in electronic or hard copy form and the Committee asked the Department to explain the omission. In its memorandum, the Department accepts that it is best practice to provide information about the availability of all documents to which reference is made in a statutory instrument and undertakes to ensure that all such references are included in future. The Committee welcomes that undertaking, and again stresses the importance it attaches to the accessibility of documents referred to in legislation, including the availability of hard copies for those without easy access to the internet. **The Committee accordingly reports regulation 2 for failure to comply with proper legislative practice, acknowledged by the Department.**

## **3 S.I. 2018/212: Reported for defective drafting**

### ***Electronic Monitoring (Responsible Persons) Order 2018***

**3.1 The Committee draws the special attention of both Houses to this Order on the ground that it is defectively drafted in one respect.**

3.2 This Order describes the persons who may be made responsible for the monitoring of individuals subject to electronic monitoring under the Criminal Justice and Court Services Act 2000. Two companies are identified by address and company number but the third, Alcohol Monitoring Systems Limited, is identified by address only. The Committee asked the Ministry of Justice to explain why Alcohol Monitoring Systems Limited is not referred to by its company number.

3.3 In a memorandum printed at Appendix 3, the Department accepts that the Order should have included the company number and undertakes to ensure that it is included the next time the Order is amended and that any new companies added to the Order in future are identified by their name, address and company number. Although it may be that the likelihood of confusion was small in this case, proper drafting practice requires that companies or other bodies referred to in legislation are given a unique identifier. (In this case, there is the additional point that instruments should be internally consistent.) **The Committee accordingly reports Article 3(a)(ii) for defective drafting, acknowledged by the Department.**

## Instruments not reported

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At its meeting on 21 March 2018 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

## Annex

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### Draft instrument requiring affirmative approval

Draft S.I. Combined Authorities (Borrowing) Regulations 2018

### Instruments subject to annulment

S.I. 2018/215	Street Works (Charges for Occupation of the Highway) (England) (Amendment) Regulations 2018
S.I. 2018/221	Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018
S.I. 2018/234	Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2018
S.I. 2018/237	Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018
S.I. 2018/239	Civil Procedure (Amendment) Rules 2018
S.I. 2018/240	Occupational Pension Schemes (Preservation of Benefit and Charges and Governance) (Amendment) Regulations 2018
S.I. 2018/249	Portability of Online Content Services Regulations 2018
S.I. 2018/250	Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment) Regulations 2018
S.I. 2018/254	Electricity (Connection Offer Expenses) Regulations 2018
S.I. 2018/255	Energy Information (Amendment) Regulations 2018
S.I. 2018/259	M3 Motorway (Junctions 2 to 4a) and the M25 Motorway (Junction 12) (Speed Limits) (Miscellaneous Amendments) Regulations 2018
S.I. 2018/262	Police Injury Benefit (Amendment) (England and Wales) Regulations 2018
S.I. 2018/271	Social Security Revaluation of Earnings Factors Order 2018
S.I. 2018/272	Wales Act 2017 (Consequential and Saving Provisions) Regulations 2018
S.I. 2018/273	Local Land Charges Rules 2018
S.I. 2018/278	Wales Act 2017 (Welsh Harbours) (Transitional Provisions and Savings) Regulations 2018

- S.I. 2018/283** Responsibilities and Standing Rules, and Care and Support (Miscellaneous Amendments) Regulations 2018
- S.I. 2018/284** Education (Student Loans) (Repayment) (Amendment) Regulations 2018

**Instruments not subject to Parliamentary proceedings not laid before Parliament**

- S.I. 2018/206** Finance Act 2004 (Standard Lifetime Allowance) Regulations 2018
- S.I. 2018/227** Policing and Crime Act 2017 (Commencement No. 7) Regulations 2018
- S.I. 2018/244** Capital Gains Tax (Annual Exempt Amount) Order 2018

# Appendix 1

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## S.I. 2018/68

### ***Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk) Regulations 2018***

1. By a letter dated 7th March 2018, the Joint Committee on Statutory Instruments requested a memorandum on the following points:

*Explain (i) the significant delay between the making and laying of this instrument and (ii) why this instrument does not contain a definition of “flag State” given that S.I. 2018/155 does contain a definition.*

#### **Point (i)**

2. The Department apologises for the delay between making and laying these Regulations. The Department endeavours to plan and manage the laying of SIs in a systematic way and apologises for the lapse in doing so in a timely manner on this occasion.

#### **Point (ii)**

3. Looking across the range of maritime instruments there is a divergence of approach as to whether the term “flag state” is defined or not. The instrument which these Regulations replace (S.I. 1996/3010) does not define the term, and it is also not defined in other more recent maritime instruments (for example S.I. 2016/1025 and S.I. 2015/782). But, as the Committee has observed, it is defined in other instruments.

4. In deciding whether or not to define the term in this instrument the Department took into account the fact that the term “flag state” is well understood in the maritime industry. The concept of the “flag state” is embedded within the United Nations Convention on the Law of the Sea (the implementation of which provides some of the enabling powers for this instrument). The application of the MARPOL Convention (as set out in Article 3 of that Convention) is also expressly linked to ships entitled to fly the flag of a Party to the Convention (or those which operate under the authority of such a Party).

5. The Department’s view is therefore that the absence of a definition does not cause uncertainty for the industry or any other relevant person. The Department accepts however that, given the inclusion of such a definition in other instruments, it may have been prudent to include it and will endeavour to adopt a consistent approach in future relevant instruments.

**Department for Transport**

**13 March 2018**

## Appendix 2

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### S.I. 2018/155

#### ***Merchant Shipping (International Load Line Convention) (Amendment) Regulations 2018***

1. By a letter dated 7th March 2018, the Joint Committee on Statutory Instruments requested a memorandum on the following points:

*Explain (i) what regulation 23(5) adds to regulation 23(3)(c) and (ii) why the Explanatory Note to this instrument does not give information about the availability of the Merchant Shipping Notice referred to in the definition of “Category A, B, C or D waters” (as S.I. 2018/68 does in relation to the Merchant Shipping Notices referred to in that instrument).*

#### **Regulations 23(3)(c) and 23(5)**

2. Regulation 23(3) explains that control over foreign ships holding a valid International Load Line Certificate in United Kingdom ports may only be exercised in limited circumstances. This control is exercised by officers authorised by the Secretary of State and one of the limited circumstances under regulation 23(3) is for the purpose of determining whether a ship has been materially altered such that it is manifestly unfit to proceed to sea without danger to human life (regulation 23(3)(c)). Regulation 23(3)(c) contains a cross-reference to a list of circumstances relating to alterations in Article 19(9) of the International Convention on Load Lines, 1966 as amended (“the 1966 Convention”), which, if they occurred, would invalidate an International Load Line Certificate.

3. Regulation 23(5) provides that the only control that can be exercised by authorised officers is to prevent a ship that has been altered in one of these ways from proceeding to sea until it can do so without endangering the passengers and crew; that is, such authorised officers cannot declare a certificate issued in respect of a foreign ship to be invalid.

4. The drafting of regulation 23(3)(c) follows very closely the provisions and drafting of Article 21(1)(c) in the 1966 Convention and Article 21(2), except that an additional circumstance is included in regulation 23(3)(c) (paragraph (d) of Article 19(9)) that does not appear in the equivalent provision in Article 21(1)(c). The drafting of regulation 23(5) follows very closely the provisions and drafting of Article 21(2) in the 1966 Convention.

5. The Department’s view is that the inclusion of regulation 23(5) is therefore necessary in order to clarify the scope of the ‘control’ to be exercised under regulation 23(3)(c), and that this follows the scheme of the Convention.

#### **Merchant Shipping Notice referred to in the definition of “Category A, B, C or D waters”**

6. These Regulations only apply to ships engaged on international voyages. The definition of “Category A, B, C or D waters” is included only to distinguish these waters

from the “sea”. The only other reference to “Category A, B, C or D waters” is in regulation 11(5), which is in the context of allowing for the effect of changing water density on a ship’s freeboard during passage to the sea, as provided for in regulations 11(1) to 11(4).

7. The definition of “Category A, B, C or D waters” in regulation 2 cross-refers to Merchant Shipping Notice 1837(M) Amendment 1, in which the scope of each of Category A, B, C and D waters is set out. However, it is not necessary to cross-refer to MSN 1837(M) in order for the definition of “sea” and the scope of regulation 11(5) to be understood as the Regulations contain the information needed to calculate the freeboard changes due to varying water density during the transition from a fresh water port to the sea. The more detailed information in MSN 1837 is necessary for ships engaged on domestic voyages, to which separate Regulations apply (the Merchant Shipping (Load Line) Regulations 1998 (S.I. 1998/2241)).

8. However, a reference to MSN 1837(M) Amendment 1 was nevertheless included in regulation 2 to be absolutely clear that Category A, B, C and D waters are specified in a document. A definition of “Merchant Shipping Notice” was also included in regulation 2 and is the standard definition of “Merchant Shipping Notice” that is included in all merchant shipping statutory instruments; it explains that a Merchant Shipping Notice is a notice that is issued by the Maritime and Coastguard Agency (an executive agency of the Department for Transport). It has always been assumed that because it is stated in statutory instruments that Merchant Shipping Notices are issued by the Maritime and Coastguard Agency, that it is a straightforward task to locate these notices.

9. However, the Department accepts that the better practice is to reference the availability of all documents to which cross-references are made in a statutory instrument, as now required by paragraph 3.17.4 in the new edition of Statutory Instrument Practice. It is unfortunate that S.I. 2018/68 and S.I. 2018/155 could not have been compared by the same reviewer in the Department, in which case the discrepancy would have been identified, but, as the Committee will appreciate, such coordination in the time available is simply not always possible.

10. In the light of previous correspondence with the Committee, the Department has taken steps to remind its drafting lawyers of the importance the Committee attaches to the accessibility of relevant documents and particularly the availability of hard copies for those without access to the internet. The Department will endeavour to ensure that references to the availability of all documents which are cross-referenced in statutory instruments are made in all instruments in the future.

## **Department for Transport**

**13 March 2018**

# Appendix 3

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## S.I. 2018/212

### ***Electronic Monitoring (Responsible Persons) Order 2018***

1. On 7 March 2018, the Committee requested that the Ministry of Justice submit a memorandum on the following point in respect of the Electronic Monitoring (Responsible Persons) Order 2018 (S.I. 2018/212):

*Explain why Alcohol Monitoring Systems Limited is referred to by title only without the addition of a company number.*

2. The Ministry of Justice is grateful to the Committee for identifying that they have omitted to include a company number for the company Alcohol Monitoring Systems Limited.

3. The Department accepts that for the sake of clarity and consistency the Order should have included the company number. However, the Department does not think that the Order is defective because of this omission. “Alcohol Monitoring Systems Limited” is the legal name of the company and the company address is expressly set out in the Order, so the reader should be able to readily identify the company as the one providing the monitoring service. A search on the Companies House website shows no other company registered with this name.

4. The Order brings together all the companies responsible for monitoring the use of electronic tags into one Order. It is expected that the Order may require amending over time to add or remove monitoring companies if different contractors are used in any pilots, or where current pilots come to an end, or if current use of electronic monitoring is extended further. The Department will ensure that the company number is added to Alcohol Monitoring Systems Limited the next time the Order is amended and will also ensure that any new companies added to the Order are identified by their name, address and company number.

**Ministry of Justice**

**12 March 2018**